

STATEMENT OF POLICY # 33
ELECTRONIC TERMINAL ACCESS

Neb. Rev. Stat. § 8-157.01 of the Nebraska Banking Act applies to any state-chartered or federally chartered bank, savings bank, building and loan association, savings and loan association, or credit union (hereinafter, “financial institutions”), or a subsidiary of any such entity, operating an automated teller machine (ATM) or point-of-sale (POS) terminal in the State of Nebraska. The Nebraska Department of Banking and Finance (the “Department”) is responsible for enforcing Section 8-157.01 as it pertains to ATMs and POS terminals that are located within the State of Nebraska.

Financial institutions have broad discretion in establishing the methods, fees, and processes regarding ATM and POS terminal use within the State of Nebraska. However, the Nebraska legislature has provided that safe and equal access to ATMs and POS terminal transactions are important state-wide goals for consumers. In order to achieve those goals, all ATM and POS transactions initiated in Nebraska shall take place without discriminatory fees, and all ATM and POS transactions are to use an approved Switch.

Automatic Teller Machine

Section 8-157.01(2) provides that all ATMs

must be made available on a nondiscriminating basis, for use by customers of any financial institution which has a main chartered office or approved branch [approved by any chartering authority] located in the State of Nebraska which becomes a user financial institution, through methods, fees, and processes that the establishing financial institution has provided for switching transactions. (brackets added)

ATM transactions are processed on a nondiscriminatory basis when all user financial institutions are provided equal access to an ATM located in the State of Nebraska and are charged nondiscriminatory fees by an establishing financial institution for use of an ATM located in the State of Nebraska, unless a specific exception exists in statute. Nondiscriminatory fees are not necessarily equal fees. “Disparate fee arrangements,” as set forth in Attorney General Opinion #92124, “would not be discriminatory if there is a reasonable relationship between the fees assessed and the transaction costs.”¹ There are two limited exceptions that allow for differing ATM fees absent a reasonable relationship

¹Nebraska Attorney General Opinion #92124, “Fee Arrangements Regarding Use of Electronic Terminals (ATMs) By Financial Institutions.”

between the fees assessed and the transaction costs. The first exception allows participation in a national ATM program where that program allows usage fees solely to the extent described in Section 8-157.01(18). The second exception, found in Section 8-157.01(1), does not require fees between affiliate financial institutions.

A financial institution is not required to offer the same services at each of its ATMs.

Point-of-Sale Terminal

Section 8-157.01(5) provides that a POS terminal may be established at any point within this state. A financial institution may contract with a seller of goods and services or any other third party for the operation of POS terminals. A POS terminal shall be made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or a branch office [approved by any chartering authority] that is located in the State of Nebraska which becomes a user financial institution.

Transactions are processed on a nondiscriminatory basis when all user financial institutions are provided equal access to a POS located in the State of Nebraska and are charged equal fees by an establishing financial institution for use of a POS located in the State of Nebraska.

Switch

Section 8-157.01(10) requires that

all financial institutions shall be given an equal opportunity for the use of and access to a switch, and no discrimination shall exist or preferential treatment be given in either the operation of such switch or the charges for use thereof. The operation of such switch shall be with the approval of the director. Approval of such switch shall be given by the director when he or she determines that its design and operation are such as to provide access thereto and use thereof by any financial institution without discrimination as to access or cost of its use. Any switch established in Nebraska and approved by the director prior to January 1, 1993, shall be deemed to be approved for purposes of this section.

Entities seeking to operate a Switch in Nebraska need to complete a Department "Application for Switch Approval" or "Notice of Switch Approval for a Federally Chartered Financial Institution." The forms are available at www.ndbf.ne.gov or upon request from the Department.

Jurisdiction

The Director of the Department has the authority to take administrative action for violations of Section 8-157.01. Financial Institution management should adopt procedures for ensuring compliance with this law by the financial institution itself and by any financial institution or entity with which it contracts for ATM, POS, or Switch services.

Effective Date: March 1, 2012

Revised: September 18, 2012